

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 04-3776

United States of America,

Appellee,

v.

Matthew M. Bradley,

Appellant.

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Appeal from the United States
District Court for the
Western District of Missouri.

[UNPUBLISHED]

Submitted: October 6, 2005

Filed: October 12, 2005

Before BYE, McMILLIAN, and RILEY, Circuit Judges.

PER CURIAM.

Matthew M. Bradley (Bradley) appeals following entry of judgment by the district court¹ upon his guilty plea to possession of stolen firearms, in violation of 18 U.S.C. §§ 922(j) and 924(a)(2) (Count 1), and being a felon in possession of a firearm, in violation of 18 U.S.C. §§ 922(g)(1) and 924(a)(2) (Count 2). The district court sentenced Bradley to concurrent terms of 120 months imprisonment and 3 years supervised release on Count 1 (the statutory maximum), and 211 months

¹The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.

imprisonment and 5 years' supervised release on Count 2. Bradley's counsel now moves to withdraw and has filed a brief under Anders v. California, 386 U.S. 738 (1967), arguing the district court abused its discretion in sentencing Bradley to 211 months' confinement. Bradley has filed a pro se motion in which he seeks (1) permission to file a supplemental brief out of time in light of Blakely v. Washington, 124 S. Ct. 2531 (2004), and (2) appointment of substitute counsel. In his motion, Bradley maintains, among other things, the district court violated Blakely and United States v. Booker, 125 S. Ct. 738 (2005).

Bradley executed a written plea agreement in which he expressly waived (1) his right to challenge the constitutionality of the federal Sentencing Guidelines, and (2) his right to appeal, directly or collaterally, any sentencing issue which had been stipulated to in the plea agreement. With respect to sentencing, the parties, in relevant part, stipulated Bradley would be sentenced as an armed career criminal under 18 U.S.C. § 924(e)(1).

We enforce this appeal waiver, because no miscarriage of justice would result: Bradley indicated his plea was voluntary and knowing, the district court properly questioned Bradley about the decision to enter the agreement and to waive his right to appeal the covered issues, counsel's challenge to Bradley's sentence falls within the scope of the appeal waiver, and Bradley's sentence is consistent with the plea agreement. See United States v. Andis, 333 F.3d 886, 889-91 (8th Cir. 2003) (en banc) (court should enforce appeal waiver and dismiss appeal where it falls within scope of waiver, both plea agreement and waiver were entered into knowingly and voluntarily, and no miscarriage of justice would result; one important way district court can ensure plea agreement and appeal waiver are knowing and voluntary is to properly question defendant about decision to enter agreement and to waive right to appeal); see also United States v. Reeves, 410 F.3d 1031, 1034-35 (8th Cir. 2005) (unless expressly reserved, right to appellate relief under Booker is among rights waived by valid appeal waiver; plea prior to Booker is not rendered involuntary or

unintelligent simply because implications of holding were not known at time of plea), petition for cert. filed, (U.S. Sept. 7, 2005) (No. 05-6322).

Having reviewed the record independently under Penson v. Ohio, 488 U.S. 75, 80 (1988), we find no nonfrivolous issues falling outside the scope of the appeal waiver. Accordingly, we dismiss the appeal and grant counsel's motion to withdraw. Additionally, we deny Bradley's motion to file a supplemental brief, because he wishes to raise issues covered by the appeal waiver, and we also deny his request for appointment of substitute counsel.
